

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK04-83795
)
CHRISTOPHER MICHAEL McVAY and) CH. 13
CONSTANCE MARY BROOKS-McVAY,)
) Filing No. 44, 49
Debtor(s))

ORDER

Hearing was held in Omaha, Nebraska, on February 4, 2008, regarding Filing No. 44, Motion for Relief from Stay, filed by DaimlerChrysler Financial Services Americas, L.L.C., and Filing No. 49, Resistance, filed by the debtors. Ronald Hunter appeared for the debtors and Kathryn Klein appeared for DaimlerChrysler Financial Services Americas, L.L.C.

DaimlerChrysler Financial Services Americas, L.L.C., has filed a motion for relief from the automatic stay with regard to a 1999 Dodge Ram Van 3500 1-ton V8. The vehicle is a specialized vehicle which includes rear air conditioning and a wheelchair ramp. The debtors have provided full coverage insurance with the moving party as the loss payee. The debtors have been unable to make payments because Mrs. McVay is unable to work and is confined to a wheelchair while Mr. McVay is unemployed as a result of medical conditions.

Mr. McVay is awaiting a ruling on his application for Social Security disability benefits and anticipates a hearing in April or May 2008.

The vehicle is worth approximately \$8,600 and the claim held by the movant has a balance of approximately \$3,600. In other words, there is an apparent equity cushion of about \$5,000.

At the hearing the debtors presented evidence and argument that relatives would help make the payments. That evidence and argument were countered by a statement by counsel for the movant that several months ago the debtors made the same promise but no funds have been forthcoming recently.

The debtors have been ordered to file an amended plan by February 21, 2008, and cure the delinquency to the Chapter 13 trustee by that date or suffer dismissal.

The motion for relief from the automatic stay is deferred. The stay remains in place. The creditor is adequately protected, at least at this point, with the equity cushion in the vehicle. The debtors have proposed making payments with funds to be received from relatives and have suggested that there is a good possibility that Social Security disability payments will be made available to them in a few months, which will allow them to cure the deficiency.

If the debtors are able to fund an amended plan, the court will revisit the motion for relief in June of 2008, upon the request of the moving party. At that time, the parties and the court will be able to evaluate the likelihood that the debtors will be successful in curing the deficiency to the movant on a timely basis.

If the debtors are not able to obtain confirmation of an amended plan relatively soon, the case will be dismissed and the debtors and the movant may deal with the matter outside of bankruptcy.

IT IS ORDERED that a ruling on the Motion for Relief from Stay, Filing No. 44, is deferred pending an amended plan to be filed by the debtors by February 21, 2008.

DATED: February 14, 2008.

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

Ronald Hunter
*Kathryn Klein
Kathleen Laughlin
U.S. Trustee

Movant (*) is responsible for giving notice of this order as required by rule or statute.